SUPREME COURT, U.S.
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No. _____

IN THE

# Supreme Court of the United States

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY,

*Petitioner*,

v.

LEONARD BOLDEN,

*Respondent.*

On Petition for a Writ of Certiorari from the Supreme Court of Pennsylvania

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

Whether the Supreme Court of Pennsylvania erred when it affirmed an intermediate appellate court decision that a door closer, attached to a door located in a passenger seating area of a commuter rail car, is a statutory "part or appurtenance" under the Locomotive Inspection Act ("LIA") when:

A. This decision is an unprecedented departure from this Court's seminal ruling in *Southern Railway Co. v. Lunsford*, 297 U.S. 398 (1936), holding that under the BIA (predecessor to the LIA) the statutory terms "parts or appurtenances" encompasses only those items that are integral or essential to a completed locomotive; and

B. This decision is in conflict with every federal and state court decision that has applied, without exception, *Lunsford's* definition of "parts or appurtenances" in determining strict liability under the LIA.

## PARTIES

Southeastern Pennsylvania Transportation Authority (hereinafter "SEPTA") is a transportation authority. SEPTA was statutorily created by the Commonwealth of Pennsylvania. 74 Pa. C.S. §1711. The Supreme Court of Pennsylvania has determined that SEPTA is a Commonwealth agency. *See Spencer v. Southeastern Pennsylvania Transportation Authority*, 525 Pa. 488, 581 A.2d 585 (1990).

Pursuant to Supreme Court Rule 28.1 Rule, the Petitioner is not required to file a corporate disclosure.

Petitioner employed Leonard Bolden as a conductor in its commuter rail division.

There are no other parties to this litigation.

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## OPINIONS BELOW

The Order of the Supreme Court of Pennsylvania is reprinted in the App. at 1a. The Order granting Allocatur addressing a federal question is reprinted in the App. at 2a. The Order of the Commonwealth Court of Pennsylvania denying Petitioner's Application for Reargument is reprinted in the App. at 3a. The Opinion and Order of the Commonwealth Court of Pennsylvania from which the appeal was taken to the Supreme Court of Pennsylvania are reprinted at App. at 4a - 10a. The Opinion and Order of the Court of Common Pleas of Philadelphia County from which the appeal was taken to the Commonwealth Court of Pennsylvania are reprinted at App. at 11a- 30a.

## JURISDICTION

The Supreme Court of Pennsylvania affirmed a judgment on a claim brought pursuant to a federal statute (the "LIA"), on November 3, 2006. App. at 1a. The grant of Allocatur to the Pennsylvania Supreme Court specifically stated that the question for review concerned the interpretation of a federal statute. App. at 2a. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(a).

## STATUTES INVOLVED

This Petition concerns the Locomotive Inspection Act, 49 U.S.C. §20701 ("LIA" or "Act"). Section 20701 provides as follows:

A railroad carrier may use or allow to be used a locomotive or tender on its railroad line only when the locomotive or tender and its parts or appurtenances:

1. are in proper condition and safe to operate without unnecessary danger of personal injury;

2. have been inspected as required under the Act and regulations prescribed by the Secretary of Transportation under the Act; and

3. can withstand every test prescribed by the Secretary of Transportation under this Act.

## STATEMENT OF THE CASE

### 1. Statement Of Facts

On August 14, 1997, the Petitioner employed Leonard Bolden as a train conductor in its commuter rail division. Mr. Bolden was assigned to work on Petitioner's R-5 commuter rail line which provides transportation for commuters between Paoli, Pennsylvania and Lansdale, Pennsylvania with stops in the City of Philadelphia.

The train in use at the time of Mr. Bolden's accident consisted of three commuter rail cars. Each of the end cars had an operating compartment or "cab" where the engineer sits and operates the train. The end cars are known as "MU cars." An MU car is an electronically propelled railcar with a separate passenger compartment and a separate operating cab.

The operating compartment of the MU car is commonly referred to as the "head end" or "cab." The door to the operating compartment remains locked at all times during the operation of the train. The locked cab door separates the operating compartment from the passenger compartment or seating area which is to the rear of the cab.

To board the MU car, passengers must first pass through an exterior door located on the side and at the back of the MU car, enter into a vestibule, and then walk through a parlor door leading to the passenger compartment. The parlor door is at the complete opposite end from the operating compartment. The distance between the parlor door, which opens into the passenger compartment, and the clearly delineated operating cab is 50 feet.

On August 14, 1997, Mr. Bolden boarded the R-5 train at Suburban Station in Center City Philadelphia. Mr. Bolden was part of a train crew that included Deidre Rich, a passenger assistant, and Jerry Fallis, the engineer. Mr. Bolden's crew was relieving the previous train crew that was completing their shift. As is customary, a member of Mr. Bolden's train crew discussed the status of the train with the departing crew. In particular, the focus of the discussion was to determine if there were any problems with the train's operation. The departing crew indicated that there were no problems.

When Mr. Bolden and the crew boarded the train at Suburban Station, the lead car was number 420; the middle car was number 419; and the rear car number was 402. The train departed Suburban Station and headed in a northbound direction to Lansdale. Mr. Bolden, a conductor, and Deidre Rich, a passenger assistant, worked only in the passenger seating areas, collecting fares and tickets and providing assistance to passengers. Neither Mr. Bolden nor Ms. Rich worked in the operating cab. Mr. Fallis, in the cab of car 420, operated the train in a northerly direction to Lansdale. Upon arriving in Lansdale, Mr. Fallis changed ends in order to make the southbound trip back to Center City. Once the

ends were changed, car number 402 became the lead car; 419 remained in the middle; and car 420 became the rear car.

At Lansdale, Mr. Fallis did not use the vestibule or parlor door on MU 402 to gain access to the operating compartment. Mr. Fallis ascended a ladder attached to the cab of MU 402 and entered through a door at the top of the ladder to access the operating compartment. The ladder and door that Mr. Fallis used only provided entry to the operating cab.

In Lansdale, Mr. Bolden walked through the interior of the train from the rear car 420, through the middle car 419 and into the passenger compartment located at the very back of car 402. In doing so, Mr. Bolden moved through parlor doors on cars 420, 419 and 402. According to Mr. Bolden, it was this last passenger or parlor door which contained a defective door closer.

Mr. Bolden testified that when he pushed through the parlor door to enter the passenger compartment of car 402 he did not experience any resistant tension from the door and this caused him to fall onto the floor of the passenger area of the car. Mr. Bolden injured his shoulder as a result of the fall. Prior to this occurrence, neither passengers nor employees had any complaints about the door or the door closer. After Mr. Bolden's incident, the train continued on its route with the parlor door wedged open. At the end of Mr. Bolden's shift, another crew took over and the three-car train continued to operate for the rest of the day without further incident.

**2. The Proceedings Below.**

Mr. Bolden filed suit against Petitioner in the Court of Common Pleas for Philadelphia County, claiming that Petitioner's negligence caused his injuries under the Federal Employers Liability Act, 45 U.S.C. §51 *et seq.* Mr. Bolden also claimed that Petitioner was strictly liable to him for his injuries under the LIA, 49 U.S.C. §20701. The LIA (successor to the BIA) imposes upon rail carriers an absolute duty to maintain their locomotives and their parts and appurtenances in proper and safe operating condition.[1]

Liability is established under the LIA when there is a violation of any regulation enacted pursuant to

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[1] In 1994, Congress re-codified the BIA as part of its re-codification of "laws related to transportation in one comprehensive title." *Law v. General Motors Corporation*, 1995 WL 542496, n. 3 (N.D. Cal. 1995), *aff'd*, 114 F.3d 908 (9th Cir. 1997). The 1994 re-codification included only minor modifications in the language of the BIA, simply for the purpose of promoting clarity and consistency. *Id.* At the time of the re-codification, the BIA was renamed the "Locomotive Inspection Act" Throughout, Petitioner refers to the BIA and LIA interchangeably. The application of the BIA case law to cases arising under the LIA has been embraced by all jurisdictions addressing LIA claims.

Liability under the LIA, like its predecessor the BIA, is not based on the negligence of a railroad. *Lilly v. Grand Trunk Western R. Co.*, 317 U.S. 481, 485 (1943). Common carriers by railroad have "an absolute duty to maintain their locomotives in safe and proper condition" under the LIA. *Id.*; *Mosco v. Baltimore & Ohio Railroad*, 817 F.2d 1088, 1090 (4th Cir. 1987), *cert. denied*, 484 U.S. 851 (1987) (Railroads that violate the LIA may be strictly liable to employees who are injured as a result of the violation.)

49 C.F.R. Part 229 or where a defective part or appurtenance of a locomotive causes an injury. Mr. Bolden did not base his claim on a violation of any regulation enacted pursuant to Part 229. Mr. Bolden contended that the door closing mechanism on the door allowing entry into the passenger compartment was a "part or appurtenance" of a locomotive rendering Petitioner strictly liable for his injuries under the LIA.

At trial, the jury returned a verdict in favor of Petitioner on Mr. Bolden's FELA claim. However, the jury returned a verdict in favor of Mr. Bolden on his LIA claim in the amount of $460,000.00. The Court of Common Pleas entered judgment on Mr. Bolden's LIA claim and against the Petitioner. App. at 31a.

In its Post-trial Opinion upholding the jury verdict, the trial judge determined that the LIA should be read broadly to include the door closer of the MU car without taking into account whether the door closing mechanism was integral or essential to a completed locomotive as required under the seminal decision of this Court in *Southern Railway Co. v. Lunsford*, 297 U.S. 398 (1936). App. at 20a, 24a.

The *Lunsford* Court defined a statutory "part or appurtenance" under the BIA as "*Whatever in fact is an integral or essential part of a completed locomotive* and all parts or attachments definitively prescribed by lawful order of the Interstate Commerce Commission." 297 U.S. at 402 (emphasis added). *Lunsford* made it very clear that strict liability under the BIA would attach only when an injury was caused by a defective part or appurtenance that was integral or essential to the locomotive's operation.

Despite this Court's decision in *Lunsford* defining the statutory meaning of parts or appurtenances of a locomotive, the trial court declined to follow *Lunsford*. The trial court reasoned that *Lunsford* was inapplicable to a claim that a carrier failed to properly maintain a part or appurtenance. Instead, the trial court chose to refer to dictionary definitions of a "part" found in Black's Law Dictionary and the Merriam-Webster Online Dictionary in determining whether Mr. Bolden had stated a claim for relief under the LIA. App. at 21a-23a. Grounding its decision on these dictionary definitions, the trial court concluded that Petitioner was strictly liable to Mr. Bolden under the LIA because the door closer "is an appendage and accessory of the operating compartment" of the MU train. App. at 22a.

Petitioner timely appealed to the Superior Court of Pennsylvania on the basis that the trial court's decision was at odds with *Lunsford* and every case, state or federal, that has interpreted the meaning of "parts or appurtenances" under the LIA. The Superior Court subsequently transferred the appeal to the Commonwealth Court of Pennsylvania.

On appeal, the Commonwealth Court ruled that this Court's decision in *Lunsford*, *supra*, did not apply to the facts presented in this case. The Commonwealth Court held that the *Lunsford* definition of parts and appurtenances applied only to cases that involved experimental devices (such as the part at issue in *Lunsford*) and to cases in which the plaintiff alleges that a railroad failed to install required equipment on a locomotive. App. at 6a-7a. With these limitations, the Commonwealth Court excluded from *Lunsford's* controlling precedent all

claims asserting that a carrier failed to maintain a part or appurtenance of a locomotive.

The Commonwealth Court noted that in its view existing jurisprudence had not specifically addressed whether a door closer on a passenger door was a part or appurtenance under the LIA App. at 7a. Having determined that *Lunsford* was inapplicable, the Commonwealth Court developed its own test to determine whether the door closer was covered under the LIA. App. at 7a-8a. To that end, the Commonwealth Court found that the door closer enhanced passenger and employee safety; assisted employees in their duties; and the LIA was a broad remedial Act. Based on this analysis, the Commonwealth Court concluded that the defective door closer, attached to a door opening into a passenger seating area, was a statutory part or appurtenance under the LIA. The Commonwealth Court affirmed the trial court's decision upholding the verdict against Petitioner under the LIA. App. at 9a.

Following the decision of the Commonwealth Court, a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania was accepted. The Petition for Allocatur was granted on the question of whether the door closing mechanism was a "part or appurtenance" under the LIA. App. at 2a. Following briefing and oral argument, the Supreme Court of Pennsylvania affirmed the decision of the Commonwealth Court without an opinion. App. at 1a.

## REASONS FOR GRANTING THE WRIT

The decision and Order of the Supreme Court of Pennsylvania expands the reach of the LIA in a manner that defies binding precedent – *Lunsford* –

and 70 years of consistent and unbroken case law applying *Lunsford* to the interpretation of the LIA. The Supreme Court of Pennsylvania is the only tribunal, federal or state, that has failed to follow the *Lunsford* test in determining whether a part or appurtenance is subject to LIA coverage. As a result, the Pennsylvania Courts have imposed strict liability on a rail carrier for an injury that occurred in a passenger area of a train car. This unwarranted and unreasonable expansion of the LIA is inconsistent with the Congressional intent supporting the passage of the Boiler Inspection Act ("BIA") and is contrary to controlling precedent of this Court on a matter of federal law.[2]

The Supreme Court of Pennsylvania's departure from this Court's binding precedent has created a conflict in the jurisprudence interpreting a federal statute and involves a matter of public importance affecting interstate commerce. For these reasons, certiorari should be granted.

## I. The Decision of the Highest Pennsylvania Appellate Court Conflicts with the Legislative Intent to Limit Strict Liability Under the LIA to the Locomotive.

To understand the magnitude of the extraordinary error that occurred, it is necessary to consider the history of rail carrier liability to employees injured on the job. In 1908, Congress passed the Federal Employers Liability Act ("FELA") 45 U.S.C. §51, et. seq. The FELA imposed upon rail carriers the responsibility of paying damages to employees injured

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[2] Petitioner has used the word "locomotive" to include the locomotive, tender and their parts or appurtenances.

on the job as a result of the carrier's negligence. *See Kernan v. American Dredging Co.*, 355 U.S. 426, 432 (1958). Thus, from 1908 to 1911, employees of rail carriers could recover damages for work related injuries that occurred if the carrier was negligent. FELA covered all areas of the train.

In 1911, the Boiler Inspection Act ("BIA") was enacted during the period when railroads used steam locomotives. The BIA was substantively, if not in form, an amendment to the FELA. *See Urie v. Thompson*, 337 U.S. 163, 189 (1949). In contrast to FELA, the purpose of the BIA was to protect employees and passengers of rail carriers for injuries that occurred as a result of locomotive operations without considering the negligence of the railroad. Congress recognized that steam locomotives had inherent dangers because they could explode violently and cause serious damage to persons and property. The BIA was intended to protect railroad employees in the event of boiler explosions in steam locomotives. Railroad employees working on locomotives with boilers were exposed to potentially extreme hazards. In order to prompt the carriers to undertake rigorous inspections and to initiate the steps necessary to eliminate these hazardous, carriers were subject to strict liability for violations of the BIA. *See Garcia v. Burlington Northern Railroad Company*, 818 F.2d 713, 715 (10th Cir. 1987).

In 1915, the BIA was amended to cover the entire locomotive and its "parts or appurtenances." 45 U.S.C. §23; *Marshall v. Burlington Northern, Inc.*, 720 F.2d 1149, 1152 (9th Cir. 1983). The reason for the amendment to the statute is illustrated in the legislative history supporting the passage of the BIA and its subsequent amendment in 1915:

> The initial debate [1911] on the floor of the House indicated that *the legislators were primarily concerned with boiler explosions.* Representative Mann, Chairman of the House Committee on Interstate and Foreign Commerce, which reported the bill, said 'It is the belief of all people concerned, both the railroads and the employees that *the passage of this bill will materially result in the lessening of boiler explosions.*' 46 Cong. Rec. 2071 (1911). Representative Robinson spoke of accidents caused by 'defective boilers,' *Id.* at 2072, and Representative Peters of explosions, steam pressure, and the need to inspect boilers from the inside, *Id.* at 2074. The broadening of the Act in 1915, was recommended by the Senate Committee on Interstate Commerce, S.Rep., 63rd Cong., 3d Sess., No. 1068, which said:
>
> '*This measure provides for the inspection of the entire locomotive.* Experience has shown that this is necessary and *desirable for the proper safeguarding of the lives of those who travel and of those engaged in the operation of locomotives.*'
>
> The House Report on the 1924 amendment, 68th Cong., 1st Sess., No. 490, reprinted a letter from the Interstate Commerce Commission which spoke in passing *of accidents 'resulting from the failure of some part or appliance of the locomotive or tender.'* P. 3. The Senate Report, No. 740, simply reprinted the House report with approval.

*Calabritto v. New York, New Haven & Hartford R.R.*, 287 F.2d 394, 398 (2nd Cir. 1961), *cert. denied*, 366 U.S.

928 (1961). (Emphasis added). The 1915 amendment was specifically concerned with injuries and accidents that occurred from a defective part or appurtenance on a locomotive or its tender. It is beyond argument that the operation of a locomotive involved hazards not present in other train areas such as the passenger compartments.

The enactment of the BIA and its amendment, reveal that the intent of Congress in supporting the passage of the BIA, with its strict liability, was to protect individuals from the undue hazards associated with the operation of a locomotive.

## II. Certiorari Should Be Granted Because the Decision of the Highest Pennsylvania Court Conflicts with this Court's Seminal Ruling in *Lunsford*.

*Lunsford* provided this Court with the opportunity to define and give meaning to the "parts or appurtenances" language of the BIA. The *Lunsford* Court noted that the BIA imposed upon a rail carrier an absolute duty to maintain a locomotive and its parts or appurtenances in proper operating condition. Significantly, but inexplicably lost on the courts below, the *Lunsford* Court pronounced without qualification that it would "give definite interpretation to the statutory terms parts and appurtenances." 297 U.S. at 401. The *Lunsford* Court ruled that a statutory part or appurtenance is: "*Whatever in fact is an integral or essential part of a completed locomotive, and all parts or attachments definitely prescribed by lawful order of the Interstate Commerce Commission.*" *Id.* (emphasis added).

*Lunsford* involved the question of whether an experimental device attached to a locomotive to

prevent a derailment was encompassed by the BIA. Relying on testimony of the general superintendent of the railroad who testified that the use of the device could not possibly endanger the operation of the train nor did it enhance safety, this Court concluded that the device was not a part or appurtenance of a locomotive within the meaning of the BIA. *Id.* at 400. Nowhere in *Lunsford* does this Court suggest that its definition of "parts or appurtenances" applied only to the specific fact pattern before it. To the contrary, this Court stated that it would take the opportunity to give definite meaning to the statutory terms "parts or appurtenances." There is nothing in the *Lunsford* decision that limits its definition of "parts or appurtenances" to a particular fact pattern or class of claims.

*Lunsford* properly gave effect to Congressional intent supporting the enactment of the BIA now known as the LIA. *Lunsford's* definition of the terms "parts or appurtenances" of a locomotive comports with the intended scope of the BIA – strict liability for injuries due to a failure of a part that is associated with the hazardous activity Congress sought to remediate – locomotive operation.

*Lunsford* leaves no doubt that strict liability under the BIA extends no further than the locomotive (and tender) and their integral or essential parts. The *Lunsford* decision comports with the Congressional intent supporting passage of the BIA, the express language of the statute, and follows the BIA's focus on the hazards associated with locomotives and their operation. Strict liability does not apply to injuries that occur to employees (or passengers) of a rail carrier in a passenger area of a train. Before and

after the enactment of the BIA, FELA or common law negligence theories covers these claims.[3]

## III. Certiorari Should Be Granted Because the Decision of the Highest Pennsylvania State Court Conflicts With Every Federal and State Court Which has Determined Whether a Part or Appurtenance is Subject to LIA Coverage and its Strict Liability.

The trial court's decision (and the Commonwealth Court's decision that followed) ignored 70 years of jurisprudence applying *Lunsford* in determining LIA coverage. The decision at issue here is extraordinary. The Commonwealth of Pennsylvania stands alone in holding that a railroad is strictly liable for a defect in a part located in a passenger area of a train. Every tribunal, without exception, has held that in order for strict liability to attach under the LIA, a defective part or appurtenance must be integral or essential to the locomotive. A passenger door leading to the

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[3] FELA covers cases involving injuries arising in a passenger area of a train car. FELA requires railroads to provide its employees a reasonably safe work environment and safe work equipment. *Peyton v. St. Louis Southwestern Ry. Co.*, 962 F.2d 832 (8th Cir. 1992). In cases where passengers have been injured or killed as a result of improperly operating vestibule doors, the claims against the railroad are brought on the basis of negligence, not strict liability under the LIA. *See, e.g., Williams v. National Railroad Passenger Corp.*, 161 F.3d 1059 (7th Cir. 1988); *Fashauer v. New Jersey Transit*, 57 F.3d 1269 (3rd Cir. 1995); *Taylor v. National Railroad Passenger Corp.*, 310 F. Supp.2d 727 (E.D. Pa. 2004); *Donnelly v. National Railroad Passenger Corp.*, 16 F.3d 941 (8th Cir. 1994); *Barie v. Central Railroad Company of New Jersey*, 71 N.J. Super. 585, 177 A.2d 568 (1962); *Pennsylvania R. Co. v. Pomeroy*, 239 F.2d 435 (C.A. D.C. 1957), *cert. denied* 353 U.S. 980 (1957).

seating area in a passenger compartment is not associated in any way with the hazards inherent in operating a locomotive.[4]

Every court that has reviewed the LIA's applicability to a *failure to maintain* claim, has applied *Lunsford*, notwithstanding the Commonwealth Court's illogical and unsupported conclusion that *Lunsford* applied only to: (1) cases involving experimental devices; and (2) to claims alleging that a rail carrier failed to install equipment on a locomotive. All cases decided after *Lunsford*, either federal[5] or state[6], are consistent in applying

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[4] See cases at footnote 3.

[5] *See, e.g., Tiller v. Atlantic Coast Line Railroad*, 323 U.S. 574 (1945) (headlight on a locomotive); *Lilly v. Grand Trunk Western R. Co.*, 317 U.S. 481 (1943) (boiler spout on a locomotive was a part or appurtenance); *Bolan v. Lehigh Valley Railroad*, 167 F.2d 934 (2nd Cir.1948) (pilot step attached to a locomotive found to be a part or appurtenance); *Calabritto v. New York, New Haven & Hartford R.R.*, 287 F.2d 394, 398 (2nd Cir. 1961), *cert. denied*, 366 U.S. 928 (1961) (locomotive platform found to be a part or appurtenance); *Whelan v. Penn Central Company*, 503 F.2d 886 (2nd Cir. 1974) (step on a locomotive for the engineer to enter operating compartment was a part and appurtenance); *Heiselmoyer v. Pennsylvania R. Co.*, 243 F. 2d 773 (3rd Cir. 1957) (a cab seat is an essential part of a completed locomotive); *Holfester v. Long Island Railroad*, 360 F.2d 369 (2nd Cir.1966) (court found that a fuse box attached to a locomotive was a part or appurtenance); *Southern Railway Co. v. Bryan*, 375 F.2d 155 (5th Cir.), *cert. denied*, 389 U.S. 827 (1967) (court found that a lifting eye was an essential part of the locomotive's operation, therefore, it was a part and appurtenance); *Fritts v. Toledo Terminal Railroad*, 293 F.2d 361 (6th Cir.1961) (court found that a fireman's seat located in the operating compartment of a locomotive was a part and appurtenance); *Green v. River Terminal R. Co.*, 585 F. Supp. 1019 (N.D. Ohio 1984), aff'd, 763

*(footnote continues)*

*Lunsford's* integral or essential test to failure to maintain claims and, indeed, to any other theory that a plaintiff advances under the LIA.

To illustrate the unprecedented departure that the Pennsylvania Courts have embarked upon, each federal and state decision set out in footnotes four and

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*(footnote continued)*

F.2d 805 (6th Cir. 1985); (discussing *Lunsford* and whether a radio in the operating compartment was a part or appurtenance of a locomotive); *Herold v. Burlington Northern*, 761 F.2d 1241, 1246 (8th Cir. 1985), *cert. denied*, 474 U.S. 888 (1985) (the court found that the *Lunsford* test applied when it determined that an amber rotating beacon on a locomotive was a part or appurtenance because it is integral or essential to the locomotive's operation); *Louisville & N.R. Co. v. Botts*, 173 F.2d 164 (8th Cir. 1949) (court found a dangerous bolt on switch engine to be a part and appurtenance); *Chicago, Rock Island & Pacific Railroad v. Speth*, 404 F.2d 291 (8th Cir.1968) (warning torpedoes located inside the engine cab); *Marshall v. Burlington Northern, Inc.*, 720 F. 2d 1149 (9th Cir. 1983) (there is a duty to maintain parts and appurtenances attached to a locomotive, however, no proof offered that the lights were attached at time of accident): *Kleeberg v. Norfolk Southern Railway Co.*, 2001 WL 914460 (N.D.Ill. 2001) (court found that a cab seat located in the operating compartment was a part and appurtenance); *Collins v. Union Pacific R.Co.*, 2002 Mont. Dist. Lexis 1891 (cab door was an integral and essential part of locomotive); *Zollinger v. Pittsburgh & Lake Erie Railroad*, 337 F.Supp. 913 (W.D.Pa.1972) (a push-pole integral to the use of the locomotive and found to be a part and appurtenance).

[6] *See, e.g., Fontaine v. National Railroad Passenger Corp.*, 63 Cal.Rptr.2d 644, 54 App.4th 1519 (App. 3rd Dist. Cal. 1997), (the court specifically relied on *Lunsford* and stated that ([t]here is no question the ladder at issue was an integral or essential part of a completed locomotive: it permitted personnel movement between the ground and the locomotive's rear platform

*(footnote continues)*

five concerned claims asserting that a carrier failed to maintain a part or device. To be sure, the vast majority of LIA claims assert that the carrier failed to maintain a part or appurtenance. Yet not one of these cases has concerned a part located in a passenger area of a train and not on the locomotive.

Adherence to *Lunsford* is also found in every case in which a plaintiff has asserted a claim on the theory that a railroad failed to install required equipment on a locomotive.[7] The foregoing *failure to install* and

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*(footnote continued)*

connecting to the engine compartment); *Seaboard Coast Line Railroad v. Jackson*, 256 So.2d 568 (Fla.1971), *cert. denied*, 409 U.S. 1001, (1972) (radio located in the operating compartment of the locomotive found to be a part and appurtenance); *Louisville & N.R. Co. v. Stephens*, 298 Ky. 328, 182 S.W.2d 447(Ct. App. Ky. 1944) (appliance is so important as to be an integral or essential part of the completed locomotive whether or not there is a specific regulatory provision); *Lakin v. Consolidated Rail Corp.*, 545 N.E. 2d 843 (Ind. 1989); *CSX v. Haischer*, 151 Md. App. 147, 824 A.2d 966 (2003) (ascending stairs from the nose of locomotive and struck by cover of the head train device which was found to be an integral part of locomotive); *Hubbard v. National Railroad Passenger Corporation*, 2004 WL 1977646 (Mich.App. 2004); *Duchsherer v. Northern Pacific Railway Company*, 4 Wash.App. 291, 481 P.2d 929 (1971) (court found that a turntable attached to the front of a locomotive and used in the operation of a locomotive was a part and appurtenance).

[7] It is correct that *Lunsford* is controlling precedent over all cases brought under the LIA including cases asserting that a carrier *failed to install* a needed part, *see* e.g., failure to install cases: *Mosco v. Baltimore & Ohio Railroad*, 817 F.2d 1088 (4th Cir. 1987), *cert. denied*, 484 U.S. 851 (1987)(failure to install protective devices for locomotive windows were not "integral or essential" to a completed locomotive); *Weaver v. Missouri Pacific Railroad*, 152 F.3d 427 (5th Cir. 1998) (failure to install

*(footnote continues)*

*failure to maintain* cases unequivocally demonstrate that the *Lunsford* test of "Whatever in fact is integral or essential to the completed locomotive" is the polestar for strict liability under the LIA.[8]

*Lunsford* and its progeny also teach that not every part or appurtenance *on* a locomotive is covered under the LIA: only those parts that are integral or essential to the locomotive and its operation. In

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*(footnote continued)*

air conditioning and screens on locomotives; court held that they were not parts or appurtenances of a completed locomotive); *McGinn v. Burlington Northern Railroad Company*, 102 F.3d 295 (7th Cir. 1996) (failure to install luggage rack in a locomotive; court held luggage rack was not an integral or essential component to the operation of a locomotive); *King v. Southern Pacific Transportation Co.*, 855 F. 2d 1485 (10th Cir. 1988) (it would have to be established that armrests in the cab were an integral or essential part of the locomotive for the plaintiff to state a claim); *Whaley v. CSX*, 362 S.C. 456, 481, 609 S.E. 2d 286, 299 (2005) (Supreme Court of South Carolina stated that "a carrier cannot be held liable under the [LIA] for failure to install equipment [unless it]. . . constitutes an essential or integral part of a completed locomotive"); *Gardner v. CSX Transportation, Inc.*, 201 W. VA. 490, 498 S.E. 2d 473 (1997) (court held that seat belts and armrests which were not installed in the locomotive were not integral or essential to a locomotive).

[8] For example, *Lunsford's* analytical framework has been applied in preemption cases in order to determine whether or not a state claim is precluded because of coverage under the LIA. *See, e.g., Ogelsby v. Del. & Hudson Rwy. Co.*, 180 F.3d 458 (2nd Cir. 1999); *Missouri P.R. Co. v. Railroad Com. of Texas*, 833 F. 2d 570 (5th Cir. Tex. 1987); *Thirkill v. J.B. Hunt Transport, Inc.*, 950 F. Supp. 1105 (N.D. Ala. 1996); *Law v. General Motors Corporation, et al.*, 1995 WL 542496 (N.D. Cal.) *aff'd*, 114 F.3d 9 908 (9th Cir. 1997); *Roth v. I & M Rail Link, et. al.*, 179 F. Supp.

*(footnote continues)*

*Mosco v. Baltimore & Ohio Railroad, supra*, 817 F.2d at 1091, the court cited *Lunsford* and held that protective devices for locomotive windows were not "integral or essential" to a completed locomotive. *See also Weaver v. Missouri Pacific Railroad, supra*; *McGinn v. Burlington Northern Railroad Company, supra*; (a luggage rack on a locomotive would not constitute a mechanism integral or essential to the operation of the locomotive. *Id.* at 299.); *Gardner v. CSX Transportation, Inc., supra*; (holding that seat belts and armrests for a cab seat in a locomotive were not "integral or essential" to the locomotive, therefore, not a part or appurtenance under the LIA). In *King v. Southern Pacific Transportation Co.*, 855 F.2d 1485 (10th Cir. 1988), the court, citing *Lunsford*, observed that the cases holding railroads liable under the LIA for a failure to maintain, concern devices on the locomotive. The *King* court understood the Congressional intent supporting the passage of the BIA and that its remedial purpose was to eliminate

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*(footnote continued)*

2d 1054 (S.D. Iowa 2001); *Bell v. Illinois Central Railroad Co.*, 236 F. Supp. 2d 882 (N.D. Ill. 2001); *Burlington Northern Railroad v. City of Connell*, 811 F. Supp. 1459 (E.D. Wash. 1993) *overturned on other grounds, Southern Pac. Transp. Co. v. Pub. Util. Comm'n of Ore.*, 9 F.2d 807 (9th Cir. 1993) (the court stated that the LIA preempts any state rule which encompasses an integral or essential part of a completed locomotive in deciding whether a City ordinance was preempted by the LIA); *General Motors v. Kilgore*, 853 So. 2d 171 (S.Ct. Ala. 2002) (the Supreme Court of Alabama held that the this court's definition in *Lunsford* of "parts or appurtenances" encompassed whatever in fact is an integral or essential part of a completed locomotive when it found that the LIA preempts a state wrongful death action).

the hazards of locomotive operation. The *King* court correctly concluded that a defective part, as a threshold matter, must be on the locomotive and, thereafter, a determination of whether it is integral or essential to the locomotive.

A door closer that is located on an interior door entirely within a passenger compartment is not "in fact" a part or appurtenance on the locomotive and, most assuredly, is not integral or essential to the locomotive's operation.

## IV. The Decision Below Was Wrongly Decided and Must Be Set Aside.

The Commonwealth Court of Pennsylvania below interpreted *Lunsford* as being limited to cases involving experimental devices or involving claims alleging that a railroad failed to install required equipment on a locomotive. App. at 6a-7a. This holding by the court created out of thin air a limitation in *Lunsford* that cannot be found in any case that has been decided in the last 70 years. The Commonwealth Court's conclusion that the "integral or essential" test set forth in *Lunsford* was not applicable to the instant failure to maintain claim has no support whatsoever.

In addition to its inexplicable departure from *Lunsford*, the Commonwealth Court decided it would define "parts or appurtenances," substituting its judgment for that of this Court and 70 years of unbroken and uniform jurisprudence. Untethered from *Lunsford* and the jurisprudence defining parts and appurtenances, the Commonwealth Court held that the closing mechanism on the passenger door qualified as a part or appurtenance under the LIA

because it "serves a useful purpose and enhances safety." If "safety" on the train was a controlling factor the BIA would have so provided and courts would not be required to determine if an item is a part or appurtenance of a locomotive in accordance with *Lunsford's* analytical framework. This flawed analysis completely ignored the congressional intent behind the BIA and its focus on the hazards associated with locomotives and their operation. App. at 7a.

No court has ever concluded that a "part" located in a passenger car (or passenger compartment) is a "part or appurtenance" of a locomotive because it has a useful purpose and enhances safety.[9] This is for several reasons: (1) in 1936, *Lunsford* defined and set out the controlling test to determine whether a defective "part or appurtenance" is subject to the BIA; (2) a part located in a passenger compartment has nothing to do with the hazards that locomotives present; and (3) a part in a passenger seating area is beyond the scope of the BIA's statutory language, controverts Congressional intent supporting the passage of the BIA and, therefore, cannot be a trigger for strict liability. The only purpose of the door closing mechanism on the parlor door is to provide resistant tension on the passenger door. The Commonwealth Court's conclusion that the parlor door closer

[9] The useful purpose was passenger comfort. Notably, cases addressing claims under the LIA have not found that temperature controls are required in the operating cab. *Mosco v. Baltimore & Ohio Railroad*, *supra*, (protective devices for windows not a part or appurtenance); *Weaver v. Missouri Pacific Railroad*, *supra*, (air conditioners and screens are not a part or appurtenance).

enhances safety in the passenger compartment cannot be a basis for concluding that the door closer is a part or appurtenance within the meaning of the BIA.

Compounding its flawed reasoning, the Commonwealth Court analogized to cases that involved injuries to employees entering or exiting locomotives. App. at 8a. Bolden was injured entering a passenger compartment where he would collect tickets and fares from passengers. The Commonwealth Court opined that it found several "ingress/egress" cases persuasive.[10] The analogy to so-called "ingress/egress cases" provided another avenue, albeit erroneous, for it to ignore this Court's definition of parts and appurtenances and run counter to every case since the *Lunsford* decision.

Once these so-called "ingress/egress" cases are properly analyzed, it is clear that the items involved were parts or appurtenances *on* a locomotive and found to be integral or essential to the operation of the locomotive. None of the cases the Commonwealth Court found persuasive concerned parts or items that were unattached, unrelated or unconnected to the operation of the locomotive. A proper analysis of the cases that purported to provide authority for the Commonwealth Court's decision, reveals that each of the cases cited *Lunsford* or applied its analytical framework requiring the defective part or appurtenance to be "in fact" an integral or essential part of the locomotive.

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[10] The Commonwealth Court's reference to "ingress/egress" cases is a categorization that is not found anywhere in the BIA/LIA jurisprudence.

It is noteworthy that the so-called "ingress/egress" cases present an internal inconsistency to the lower court's fundamental premise that the *Lunsford* test does not apply to failure to maintain equipment cases.[11] The Commonwealth Court's reliance on these failure to maintain cases (refuting its imposed limitation on *Lunsford*) is inexplicable; each of the claims were determined through application of

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[11] The Commonwealth Court relied on the following: *Gowins v. Penn. R. Co.*, 299 F.2d 431 (6th Cir.), *cert. denied*, 317 U.S. 824 (1962)(involved a slippery walkway *on* the engine); *Bolan v. Lehigh Valley R. Co.*, 167 F.2d 934 (2nd Cir. 1948) (injury caused by a defective *pilot step affixed to the switching engine*); *Whelan v. Penn Central Co.*, 503 F.2d 886 (2nd Cir. 1974) (*injury on slippery switch engine floor board*); *Louisville & N.R. Co. v. Botts*, 173 F.2d 164 (8th Cir. 1949) (*injured on rear steps attached to engine*); *Delevie v. Reading Co.*, 176 F.2d 496 (3rd Cir. 1949) (gear mechanism above foot board ladder attached to engine for entry to locomotive); *Bankston v. Chesapeake & Ohio R. Co.*, 128 Ill. App. 3d 166, 470 N.E.2d 512 (Ill.App. 1 Dist. 1984) (*a catwalk at the cab door of a locomotive*) (emphasis supplied).

Unlike the present case, the facts in each of the failure to maintain cases that the Commonwealth Court relied on concerned: (1) *entering the engine from a ground ladder* attached to the locomotive; (2) injuries arising from *crossing a walkway on the engine*; and (3) injuries caused *by parts physically connected to the locomotive* (gear mechanism). Not one of these cases concerned entry to a passenger seating area. *See King v. Southern Pacific Transportation Co.*, 855 F.2d 1485 (10th Cir. 1988). The *King* court, citing *Lunsford*, observed that the cases holding railroads liable under the LIA for a failure to maintain, concern devices *on* the locomotive. The *King* court, unlike the Commonwealth Court, understood the Congressional intent supporting the passage of the BIA and that the BIA's remedial purpose was to eliminate the hazards of locomotive operation.

*Lunsford's* analytical construct that "*Whatever in fact is an integral or essential part of a completed locomotive* - - - are within the statute." (emphasis added). The Commonwealth Court's misguided analysis was the product of reasoning untethered to *Lunsford's* definitive interpretation of parts and appurtenances and its complete misunderstanding of the hazardous activity (locomotive operations) that the BIA sought to regulate through strict liability.

The Commonwealth Court's narrow view of *Lunsford* is contrary to the seminal decision of this Court defining the statutory meaning of parts or appurtenances; runs afoul of every BIA case decided after *Lunsford*; and critically, runs counter to Congressional intent demonstrating that the BIA was enacted to protect employees and others from the dangers inherent in operating a locomotive.[12]

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[12] The Commonwealth Court's reliance on cases involving entering and exiting locomotives and finding them analogous to Mr. Bolden's claim because he was injured while entering a passenger area of a train demonstrates the lower court's superficial analysis completely devoid of statutory context. Absent from the decision below is any explanation for imposing strict liability for a defective part of a passenger compartment that is not associated with the inherent dangers in operating a locomotive. These dangers are expressed in the legislative history of the BIA, reiterated at the time of its amendment in 1915, and are implicit in the *Lunsford* decision, limiting the scope of strict liability for a defective part or appurtenance to the area (locomotive) of undue hazardous activity.

The bedrock flaw in the Commonwealth's court's reasoning was its failure to consider that the BIA was enacted to specifically address the hazards associated with the locomotive

*(footnote continues)*

## V. Federal Railroad Regulations Recognize that the MU Cab and the MU Passenger Compartment are Separate and Functionally Distinct.

Despite the Commonwealth Court's attempt to justify its decision below, the absence of a coupling mechanism between the passenger compartment and the clearly delineated operating cab does not render the *Lunsford* analysis inapplicable. The Commonwealth Court's assertion that the parlor door is connected to the locomotive car ignores the structural separation and different functionality of the passenger compartment and the operating compartment of the MU car.

To underscore these salient and critical differences, the inspection and safety regulations promulgated by the Federal Railroad Administration, Department of Transportation (FRA) recognize the structural and functional differences of the passenger and operating compartments of the MU car. The Railroad Locomotive Safety Standards governing locomotives apply only to the MU operating cab and not to the MU passenger compartment. 49 C.F.R. 229.119. Part 229 explicitly states that a violation of

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*(footnote continued)*

and its operation. If the Commonwealth Court examined the legislative history of the BIA, its amendment in 1915, and considered *Lunsford's* definitional focus, it would have understood that the BIA was intended to address, through strict liability, the hazards associated with locomotives. Consistent therewith, this Court in *Lunsford* ruled that BIA coverage may attach only if the defective part or appurtenance is integral or essential to the locomotive.

any of its requirements is a violation of the LIA. 49 C.F.R. 229.7.

In contrast, the inspection and safety regulations governing the passenger compartment of the MU car are found in the Passenger Equipment Safety Standards, 49 C.F.R. Part 238; 238.5. The safety and inspection regulations enacted in Part 238 do not impose liability under the LIA for a violation of its requirements further illustrating that the MU passenger compartment is beyond the scope of strict liability under the LIA.

## VI. Certiorari Should Be Granted Because this Case Involves Matters of Substantial Public Importance.

This case involves a matter of significant public importance. If the decision below is allowed to stand, strict liability will attach to defective parts of a passenger car no matter how remote and insignificant to the activity associated with locomotives. Other jurisdictions may be inclined to find that a decision that has been affirmed by Pennsylvania's highest court is persuasive and also expand strict liability under the LIA. The LIA was not intended to cover a defective door closer in a passenger compartment nor would this Court's decision in *Lunsford* countenance such an unwarranted expansion of strict liability.

Strict liability under the BIA applies to the hazardous activity of operating a locomotive. Congress recognized this when it enacted the BIA in 1911. *See, Calabritto v. New York, New Haven & Hartford R.R.*, 287 F.2d at 398 ("the legislators were primarily concerned with boiler explosions"). The expansion of the Act to cover parts and appurtenances of a locomotive and its tender recognized that

remediating the hazards associated with operating a locomotive should also cover other parts of the locomotive. It was sensible and prudent to confine strict liability to boilers, locomotive tenders and their parts. The railroad can exercise unimpeded and exclusive control over this equipment and can take measures to control and eliminate the hazards associated with operating a locomotive.

Petitioner, however, does not have exclusive control over the passenger door. *See Urie v. Thompson*, 357 Mo. 738, 210 S.W.2d 98, 102-103 (1948), *rev'd on other grounds*, 337 U.S. 163 (1949)(railroad company is responsible for the general design, construction and maintenance of locomotives and tenders under its control). Unlike a boiler or a mechanical part of a locomotive which the carrier exclusively controls, the door closer in this case is located in a passenger area that is used by the public. Any passenger or other person that walks onto a train could tamper with or break the door closer. This could occur seconds before the now defective part causes an injury. Mr. Bolden's crew was not advised of any problem with the train or the door closer. As this case demonstrates, a carrier may have no opportunity to correct the problem or ensure that the item is safe before an employee or passenger is injured. The decision below burdens rail carriers with strict liability even though the part was not under its exclusive control and third parties could be responsible for the defect.

To expand LIA coverage to an area where conductors collect tickets from passengers eviscerates Congressional intent and the underlying purpose of the BIA. The rationale for imposing strict liability on a railroad for the malfunctioning of a locomotive was

to ". . . [cause] the lessening of boiler explosions" because the railroad will have the incentive to ensure that its boilers are safe. *Id.* Congressional focus in passing the BIA was to motivate carriers to take special precautions where *the* most dangerous railroading activities took place – the locomotive. The decision below renders insignificant parts in a passenger area, like the parlor door closer, an agent for strict liability.

To impose strict liability in this manner expands the scope of the BIA far beyond its intended purpose. Presently there are twelve commuter rail carriers operating approximately 2,500 MU cars.[13] If this erroneous decision remains uncorrected, Petitioner and other rail carriers that operate MU cars will be exposed to large damage claims from employees or passengers for injuries where it was not negligent or at fault.

The Commonwealth Court's decision is particularly troubling because MU cars operate in

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[13] The following entities operate MU cars (either diesel or electric) on commuter rail lines: Massachusetts Bay Transportation Authority; Regional Transportation Authority (Chicago, Ill.); Metra (Chicago, Illinois); Northern Indiana Commuter Transportation District; Ft. Worth Transportation Authority; Dallas Area Regional Transportation Authority; Trinity Railway Express (Dallas/Ft. Worth); Tri-County Commuter Rail Authority (Florida); Connecticut Department of Transportation; Metropolitan Transportation Authority-Long Island Road (New York); Metropolitan Transportation Authority-Metro-North (New York); New Jersey Transit, and Southeastern Pennsylvania Transportation Authority-SEPTA (Philadelphia-Five County Area). According to American Public Transit Association there are approximately 2,500 MU cars currently in operation.

other jurisdictions adjacent to Pennsylvania, including New Jersey, New York and Delaware. Claims brought in federal court in those jurisdictions would presumably look to the federal interpretation of the LIA and, accordingly, dismiss any claim brought by a plaintiff who was injured in the same manner in which Mr. Bolden was injured. With Pennsylvania's highest court condoning and affirming a renunciation of this Court's controlling interpretation of a federal statute, other courts may choose to follow Pennsylvania or develop yet a different test to determine the meaning of "parts or appurtenances" under the LIA. The decision below presages a further splintering of the uniform interpretation of a federal statute that *Lunsford*, and all other federal and state courts, have established over the last 70 years.

It is clear that the Commonwealth Court's decision creates uncertainty and has a negative effect on interstate commerce. Petitioner's MU cars cross into Delaware and New Jersey. This means that a conductor who is injured in the same manner as Mr. Bolden on a similar MU car in New Jersey or Delaware could not maintain an LIA claim if federal law – *Lunsford* – was followed in those jurisdictions. Yet, a conductor injured due to a defective passenger door closer would be able to maintain a strict liability claim in Pennsylvania. Such an incongruous result was neither contemplated by *Lunsford* nor Congress when it enacted the BIA almost one hundred years ago. *See, U.S. v. Granderson*, 511 U.S. 39 (1990) (quoting *In Re Chapman*, 166 U.S. 661, 667 (1989)) ("[N]othing is better settled than a statute should receive a sensible construction, such as will effectuate the legislative intent, if possible, so as to avoid an unjust or absurd conclusion.").

The Pennsylvania Supreme Court's affirmance of the Commonwealth Court's decision cannot be allowed to stand. Public policy requires consistent interpretation of a federal statute especially one imposing strict liability.

## CONCLUSION

Certiorari should be granted.

Respectfully submitted,

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Date: February 1, 2007

# Appendix

[J-125-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

| | | |
|---|---|---|
| LEONARD BOLDEN, | : | No, 12 EAP 2006 |
| | : | |
| | : | Appeal from the Order of the |
| Appellee | : | Commonwealth Court |
| | : | entered on April 1, 2005 at |
| | : | No. 1361 C.D. 2004, |
| | : | affirming the Order of the |
| v. | : | Court of Common Pleas of |
| | : | Philadelphia County, Civil |
| | : | Division, entered on March |
| | : | 16, 2084 at No. 1970 April |
| | : | Term, 1998 |
| SOUTHEASTERN | : | |
| PENNSYLVANIA | : | |
| TRANSPORTATION | : | |
| AUTHORITY, | : | |
| | : | 872 A.2d 230 (Pa. Cmwlth. |
| | : | 2005) |
| Appellant | : | ARGUED: October 16, 2006 |

**ORDER**

**PER CURIAM** **DECIDED: November 3, 2006**

The Order of the Commonwealth Court is affirmed.

Judgment entered
Dated: November 3, 2006

/s/ John W. Person, Jr., Esquire
John W. Person, Jr., Esquire
Deputy Prothorotary

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

| | |
|---|---|
| LEONARD BOLDEN, | : No. 350 EAL 2005 |
| Respondent | : |
| | : Petition for Allowance of |
| | : Appeal from the Order of |
| | : the Commonwealth Court |
| v. | : |
| SOUTHEASTERN | : |
| PENNSYLVANIA | : |
| TRANSPORTATION | : |
| AUTHORITY, | : |
| Petitioner | : |

**ORDER**

**PER CURIAM**

AND NOW, this 29th day of March 2006, the Petition for Allowance of Appeal is granted. The parties are directed to address the following issue:

Whether the Commonwealth Court erred in affirming the trial court's decision that a door closing mechanism on a train is a "part and appurtenance" within the meaning of the Locomotive Inspection Act (LIA) in determining strict liability for an injury sustained by a railroad employee?

Madame Justice Baldwin did not participate in the consideration or decision of this matter.

TRUE COPY FROM RECORD

Attest: MAR 29 2006

/s/ Patricia Johnson
Patricia Johnson, Chief Clerk
Supreme Court of Pennsylvania,
Eastern District

**In the Commonwealth Court of Pennsylvania**

| | |
|---|---|
| Leonard Bolden<br>v.<br>Southeastern Pennsylvania Transportation Authority,<br>Appellant | No.: 1361 CD 2004 |

**ORDER**

NOW, May 17, 2005, having considered appellants application for reargument before the Court en banc, and appellee's answer, the application is denied.

**BY THE COURT:**

/s/ James G. Colins
James Gardner Colins
President Judge

Certified from the Record

MAY 17 2005

and Order Exit

**IN THE**
**COMMONWEALTH COURT OF PENNSYLVANIA**

| | | |
|---|---|---|
| Leonard Bolden | : | |
| | : | |
| v. | : | |
| | : | |
| Southeastern Pennsylvania | : | |
| Transportation Authority, | : | No. 1361 C.D. 2004 |
| Appellant | : | Argued: |
| | | February 28, 2005 |

BEFORE: HONORABLE JAMES GARDNER COLINS,
President Judge
HONORABLE BONNIE BRIGANCE
LEADBETTER, Judge
HONORABLE JOSEPH F. McCLOSKEY,
Senior Judge

**OPINION BY PRESIDENT JUDGE COLINS**
**FILED: April 1, 2005**

This case involves the Southeastern Pennsylvania Transportation Authority's (SEPTA) appeal from the orders of the Court of Common Pleas of Philadelphia County wherein SEPTA's motion in limine to exclude any reference to the Locomotive Inspection Act (LIA)[1] at trial was denied and a jury verdict was entered against SEPTA under the LIA. We affirm.[2]

Bolden worked as a conductor for SEPTA's regional

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[1] 49 U.S.C. §20701 *et seq.*

[2] Construing the Law is a purely legal question; therefore, the Court's scope of review is plenary and the standard of review is error of law. *Wagner v. Wagner*, 465 Pa, 448, 768 A.2d 1112 (2001).

rail line on the R5 route running between Lansdale and Paoli when he was injured. The train Bolden was riding on left Suburban Station headed north to Lansdale and consisted of three cars. The cars were numbered 420, 419, and 402, with car 420 as the lead car, car 419 as the middle car, and car 402 as the rear car. Cars 420 and 402 were electronically propelled railcars capable of pulling the attached cars. Each of the three cars has two entrances separated from the passenger compartment by parlor doors, which serve to keep passengers out of the vestibule area while the train is in motion, as well as to keep in warm or cool depending on the weather. Each parlor door has a hydraulic closing mechanism attached to it that closes the doors automatically and also gives resistance to the door being opened. Upon reaching Lansdale, the train switched ends, meaning that car 402 became the lead car and car 420 became the rear car, with car 419 remaining in the middle. After the ends were changed, Bolden made his way to the now-lead car 402. Upon entering the vestibule between cars 419 and 402, Bolden attempted to enter the passenger compartment of car 402 through the parlor door. The parlor door's closing mechanism malfunctioned and did not provide the resistance as it normally would. The lack of expected resistance caused Bolden to fall and injure his shoulder as he attempted to exert the necessary force to open the door. Bolden's claim against SEPTA under the LIA is appealed to this Court.

LIA Section 2070 1 states,

> A railroad carrier may use or allow to be used a locomotive or tender on its railroad line only when the locomotive or tender and its parts and appurtenances –

> (1) are in proper condition and safe to operate without unnecessary danger of personal injury;
>
> (2) have been inspected as required under this chapter and regulations prescribed by the Secretary of Transportation under this chapter; and
>
> (3) can withstand every test prescribed by the Secretary under this chapter.

49 U.S.C. §20701

At issue here is whether a door closing mechanism is a "part and appurtenance" within the meaning of the LIA. SEPTA argues that *Southern Ry Co. v. Lunsford*, 297 U.S. 398, (1936), controls the issue. In *Lunsford*, the U.S. Supreme Court held, "With reason, it cannot be said that Congress intended that every gadget placed upon a locomotive by a carrier, for experimental purposes, should become part thereof within the rule of absolute liability." 297 U.S. at 402. Further, the Supreme Court stated, "[w]hatever in fact is an integral or essential part of a completed locomotive, and all parts and attachments definitely prescribed by lawful order of the Interstate Commerce Commission (ICC), are within the statute. But mere experimental devices which do not increase the peril, but may prove helpful in an emergency, are not." *Id.* No one contends that the closing mechanism SEPTA employed here was experimental. Further, closing mechanisms are not mandated by any regulation of the ICC. In applying the language in *Lunsford*, the trial court reasonably distinguished that holding based upon factual differences between *Lunsford* and the present case. *Lunsford* clearly controls cases where experimental devices are used or carriers have

failed to install required equipment. The present case deals with a failure to maintain equipment that is useful and increases safety on a locomotive car, but is neither experimental nor required.

Under the relevant case law a parlor door closing mechanism was never held to be a "part or appurtenance" of a locomotive under the LIA. Nevertheless, the LIA was also never construed to exclude such closing mechanisms on parlor doors. Consequently, this Court must determine whether the trial court erred in holding that the closing mechanism is a "part and appurtenance" within the meaning of the LIA. The closing mechanism that failed in this case and led to Bolden's injury was located within the locomotive car at the time the injury occurred. Therefore, relief is potentially available under the LIA because of the closing mechanism's location on the locomotive. The closing mechanism serves a useful purpose and enhances safety. The prime purpose of the LIA is to enhance safety of employees and passengers.[3] Passing through such doors is necessary for

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[3] *Lilly v. Grand Trunk Western Railroad Co.*, 317 U.S. 481, 486 (1943) ("The Act, like the Safety Appliance Act, is to be liberally construed in light of its prime purpose, the protection of employees and others by requiring the use of safe equipment")(internal citations omitted); *Urie v. Thompson*, 337 U.S. 163, 190 (1949) ("[W]e do not doubt that the prime purpose of the Boiler Inspection Act [now the LIA] was the protection of railroad employees and perhaps also of passengers and the public at large from injury due to industrial accident") (internal citations omitted); *Matson v. Burlington Northern Santa Fe Railroad*, 240 F.3d 1233, 1235 ("FELA and LIA are 'remedial and humanitarian' statutes that impose two separate types of liability to protect the safety of railroad employees") (citing *King v. S. Pac. Transp. Co.*, 855 F.2d 1485, 1488 n.1 (10th Cir. 1988)).

conductors such as Bolden to perform their duties. The closing mechanism was correctly found to be a "part and appurtenance" of the locomotive under the liberal construction of the LIA. The closing mechanism falls within the statutory language as a "part and appurtenance" that must be maintained "in proper condition and safe to operate without unnecessary danger of personal injury." 49 U.S.C. §2070 1(1).

This Court finds persuasive a series of cases cited in Bolden's brief involving injuries that occurred to railroad employees entering and exiting locomotives. *Gowins v. Pennsylvania R. Co.*, 299 F.2d 431 (6th Cir.) (slippery walkways on engine), *cert. denied*, 371 U.S. 824 (1962); *Bolan v. Lehigh Valley R. Co.*, 167 F.2d 934 (2d Cir. 1948) (injury while attempting to board train using bent and worn step); *Louisville & N.R. Co. v. Botts*, 173 F.2d 164 (8th Cir. 1949) (injury after slipping on floorboard while mounting train); *Whelan v. Penn Central Co.*, 503 F.2d 886 (2d Cir. 1974) (ice on step assembly at rear of locomotive); *Bankston v. Chesapeake & Ohio R. Co.*, 470 N.E.2d 512 (Ill. App. Ct. 1984) (slippery catwalks on locomotive); *Delevie v. Reading Co.*, 176 F.2d 496 (3d Cir. 1949) (gear mechanism above footboard unsafe for access to cab). The foregoing cases are factually similar to the case at hand in that they involve a failure to maintain certain parts of a locomotive that are necessary for ingress and egress and were found to be covered by the LIA.

This Court notes SEPTA's extensive arguments that the *Lunsford* test of "integral or essential" was not applied by the trial court in determining whether the closing mechanism was a "part and appurtenance" under the LIA. We reject that argument on the ground that the trial court correctly distinguished the facts of this case from the *Lunsford* case's facts and holding.

Nevertheless, we do not believe that the closing mechanism would necessarily fail the *Lunsford* test. The door to which the closing mechanism is attached is clearly "integral or essential," for without it there would be no access for crew or passengers to the locomotive car while the train is moving. The closing mechanism itself serves only to enhance the safety and comfort of passengers and crew alike. Because the door is absolutely "integral or essential" and the closing mechanism makes the door safer to operate, it should fall within a liberal construction of the LIA and its purpose of enhancing safety under the *Lunsford* test at any rate. Therefore, even if the trial court erred, and we do not think it did, in not applying the *Lunsford* test, such error would be harmless.

Accordingly, we affirm.

/s/ James G. Colins
JAMES GARDNER COLINS, President Judge

**IN THE**
**COMMONWEALTH COURT OF PENNSYLVANIA**

| | | |
|---|---|---|
| Leonard Bolden | : | |
| | : | |
| v. | : | |
| | : | |
| Southeastern Pennsylvania | : | |
| Transportation Authority, | : | No.: 1361 CD 2004 |
| Appellant | : | |

## ORDER

AND NOW, this 1st day of April 2005, the order of the Court of Common Pleas of Philadelphia County is affirmed.

/s/ James G. Colins
JAMES GARDNER COLINS, President Judge

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and Order Exit

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**
**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**
**CIVIL TRIAL DIVISION**

| | | |
|---|---|---|
| **LEONARD BOLDEN, APPELLEE** | : | **APRIL TERM, 1998** |
| **V.** | : | **NO.: 1970** |
| **SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY, APPELLANT** | : | **1361 CD 2004** |

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**RIZZO, J.** **AUGUST, 2004**

## OPINION

The Appellant, Southeastern Pennsylvania Transportation Authority ("SEPTA"), appeals two matters; first, an Order of the Court of Common Pleas of Philadelphia County, entered on October 11, 2003, reflecting a jury verdict for the Appellee under the Locomotive Inspection Act, and second, a Judgment Entered on the Verdict by the Appellee on March 16, 2004.

## FACTS AND PROCEDURAL HISTORY

The Appellee, Leonard Bolden, was employed as a conductor by Appellant SEPTA from 1983 until 1999. (9/30/03 N.T. 43, 147). On August 14, 1997, the Appellee asserts that he injured his shoulder while working on a stationary Multi-Unit ("MU") Regional Rail R5 train. (9/30/03 N.T. 55). An MU may be

operated from either end (depending on the direction the train is headed) by means of engineering compartments. The MU in question was an electronically Propelled train consisting of three passenger cars (numbered 402, 419, and 420) with engineering compartments attached to each end of he train separated from the passenger compartments by parlor doors,

When the incident occurred the MU was inactive, conducting safety checks and "changing ends" in Lansdale. To change ends, the engineer moves from one engineering compartment to the other in preparation for a return trip in the opposite direction. Once the engineer relocated to the opposite end of the train in Lansdale during the morning on the day of the incident, the front car was number 402, the middle 419 and the end 420. The event prompting Appellee's original cause of action transpired when he entered car 402 by means of a parlor door leading from the vestibule separating cars 402 and 419. (9/30/03 N.T. 82-83). Appellee maintains that a closing mechanism on the rear parlor door of car 402 malfunctioned by failing to provide the standard resistance pressure. The closing mechanism consists of a hydraulic arm attached, on one end, to the parlor door and, on the other, to the frame of the door itself. (9/29/03 N.T. 56-57). This alleged defect caused the Appellee to lose his balance and fall, resulting in his claimed shoulder injury. While other members of the train's crew used the rear parlor door of car 402 without incident immediately following Appellee's fall, the door was later wedged open with a rock for the remainder of its route. Following the incident, the broken door closer was repaired.

This matter was first tried before a jury in July of

1999. On August 2, 1999, the jury rendered a verdict in favor of the Appellant with judgment being entered on that verdict by the Appellant on December 23, 1999. This judgment was appealed to the Commonwealth Court on January 13, 2000 and remanded for a new trial on January 30, 2000. The trial was scheduled for a December 2002 date but was rescheduled on December 18, 2002 for March 2003. The matter was then continued twice, first on March 17 and then again on June 1, with an ultimate date of trial set for September 29, 2003. Trial commenced before this Court on the aforementioned date with the cause of action brought under the Federal Employer's Liability Act (hereinafter referred to as "FELA"). On October 11, 2003, the Court entered an Order reflecting a jury verdict in favor of the Appellee. Appellant filed a motion for post trial relief from this Court on October 16, 2003 seeking Judgment Notwithstanding the Verdict. On March 16, 2004, the Appellee entered Judgment on the Verdict.[1] On March 30, Appellant gave Notice of Appeal to the Superior

[1] Much to the dismay of this Court, Appellee entered judgment in this matter just two days before oral argument was scheduled for post-trial motions on issues which form the bases of the instant appeal. The ultimate date selected for oral argument was made as an accommodation for BOTH parties based on prior requests for continuances on either post-trial briefing deadlines and/or previously scheduled hearing dates. Reasons cited for the requests were based on personal matters as well as professional conflicts. In this instance, the courtesy of the Court extended in granting such continuances was met by discourtesy from Appellee's counsel in depriving this Court the opportunity to hear necessary oral argument on the significant issues now on appeal. Such a hearing would possibly have been of great assistance to either narrow the issues on appeal or resolve the matter altogether.

Court. An Order on March 31, 2004 compelled Appellant: to issue a Statement of Matters Complained of on Appeal. Appellant complied on April 14, serving the Statement of Matters on the Court. On May 6, 2004 the Superior Court transferred Appellant's appeal of the present adjudication to the Commonwealth Court.

## ISSUES ON APPEAL

Pursuant to the Pennsylvania Rules of Appellate Procedure, Appellant served on this Court and Appellee's counsel a Statement of Matters Complained of on Appeal.[2] The the matters referenced focus on the following central issues[3]:

1. Whether the Trial Court erred, as a matter of law, in allowing the Plaintiff's claims to proceed to the jury under the Locomotive Inspection Act (hereinafter referred to as "LIA").

    a. Whether the Trial Court erred, as a matter of law, in deciding that the Plaintiffs injuries occurred due to a defective part or appurtenance of a locomotive "because the evidence does

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[2] See Exhibit "A" for a full Statement of Matters.

[3] It is noted that the Appellant also maintains that "[t]here is no violation, or alleged violation, of an applicable regulation promulgated by the Federal Railroad Administration which would support liability against SEPTA under the LIA." Upon investigation of the associated regulatory law, this Court agrees that there exists no applicable regulation to support a finding of liability under the LIA. Also, the Appellee fails to contend that liability under the LIA is founded on such regulations. Therefore, further discussion as to this issue is not necessary and is omitted.

not, and could not, support [such] a finding."

b. Whether the Trial Court erred in applying the Locomotive Inspection Act because doing so is "contrary to the policy underlying the doctrine of strict liability."[4]

## DISCUSSION

### I. A PARLOR DOOR ON A MULT-UNIT QUALIFIES AS A "PART OR APPURTENANCE" OF A "LOCOMOTIVE" UNDER THE LOCOMOTIVE INSPECTION ACT.

The Locomotive Inspection Act applies to locomotives and the parts and appurtenances thereto.[5] 49 U.S.C.A § 20701 (2004). As a precursor to the LIA, Congress, in 1911, enacted the Boiler Inspection Act (hereinafter referred to as "BIA") to protect railroad employees and passengers from the hazards of accidental boiler explosions. Cong. Rec. H2072 (daily ed. Feb. 7,1911) ("It is of the highest importance that every practicable means be adopted for guaranteeing

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[4] The Statement of Matters Complained of on Appeal did not include the FELA but rather the applicability of the LIA. However, the present action was initiated under the FELA because the LIA does not provide for an independent cause of action. Any party attempting recovery pursuant to the LIA must bring a cause of action under the FELA.

[5] The exact pertinent text of the LIA is as follows:

> A railroad carrier may use or allow to be used a locomotive or tender on its railroad line only when the locomotive or tender and its parts and appurtenances (1) are in proper condition and safe to operate without unnecessary danger of personal injury . . .

U.S.C.A § 20701.

safety to operatives and to passengers."). The original law covered only locomotive engines, rather than the locomotive as a whole.[6] 45 U.S.C.A § 23 (repealed 1994). The Congressional Record illustrates that the BIA was a remedial statute, intended "to protect the lives and limbs of railway employees." Cong. Rec. H2071 (daily ed. Feb, 7, 1911). Later, in a 1915 amendment to the BIA, Congress extended the act to cover the entire Locomotive.[7] Cong. Rec. H5355 (daily ed, March 3, 1915). This extension likewise applies to the 1994 codification of the LIA. 1994 U.S.C.C.A.N. 916, 917.

Appellant argues that a parlor door, located at the rear of a train car connected to the operating cab, does not fall within the purview of the LIA because its closing mechanism is not an appurtenance of the locomotive. In examining the terms "locomotive" and "part or appurtenance" within the context of the BIA and the LIA, this Court will use the recognized approach to statutory interpretation which includes an inquiry into the following three areas: (1) Stated statutory purpose; (2) Text of the statute; (3) Judicial interpretation of the statute.

Turning first to the stated statutory purpose,

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[6] Interestingly, however, the dialogue from the 1911 passage seems to contemplate coverage of the entire locomotive rather than just the boiler: "we [are] here putting a penalty upon the railway companies if their *locomotives* [are] found to be in a certain condition" Cong. Rec. S730 (daily ed. Jan. 10, 1911) (emphasis added).

[7] The exact language, explaining the purpose of the amendment, is as follows: "[i]t proposes an amendment to the boiler-inspection law, which contemplates the inspection of the entire locomotive." Cong. Rec. H5355 (daily ed. March 3, 1915).

unfortunately, the relevant legislative history surrounding the LIA fails to provide definitions for the terms "locomotive" and "part or appurtenance." 1994 U.S.C.C.A.N. at 916-17. Congress merely stated that the LIA was to function as a clear restatement of the principles previously found in the BIA.[8] Id. Turning to the BIA, examination of the legislative histories from its 1911 passage and subsequent amendments does not resolve the issue because those histories are also void of any discussion as to what qualifies as a "locomotive" or a "part or appurtenance" thereto. Cong. Rec. H2071 (daily ed. Feb. 7, 1911); Cong. Rec. H5355 (daily ed. March 3, 1915); Cong. Rec. S11124 (daily ed. June 7, 1924). Though the Congressional Record from 1911 to 1994 clearly states the intent of Congress for the BIA (and later the LIA) to extend to the entire locomotive and its appurtenances, the same Record fails to offer any definition for the word "appurtenance".[9]

Finding no guidance from Congress as to what it intended the phrase "locomotive . . . and its parts and appurtenances" to mean, this Court will now investigate case law and common definitions to discern the will of Congress. 49 U.S.C.A § 20701 (2004).

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[8] Because the LIA did not substantively alter the BIA, this Court will apply cases arising under both the LIA and the BIA to the current appeal. This application of BIA case law to cases arising under the LIA has been embraced by other jurisdictions.

[9] "A studious examination of the proceedings and debates of Congress . . . fails to throw any light whatsoever on the question [of what is an appurtenance]" Brown v. Lehigh Valley R.R. Co., 108 N.Y. Misc. 384, 390 (1919).

**A. THE FORWARD CAR ON A MULTI-UNIT TRAIN CONTAINING BOTH OPERATING AND PASSENGER COMPARTMENTS IS A LOCOMOTIVE UNDER THE LOCOMOTIVE INSPECTION ACT.**

A locomotive is commonly defined as "a machine that moves about by operation of its own mechanism." Merriam-Webster Online Dictionary, *Locomotive*, http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=locomotive (accessed June 8, 2004).[10] This definition is supported by case law classifying a locomotive as any self-propelled vehicle operating on railroad tracks and performing a locomotive function. Holfester v. Long Island Railroad Co., 360 F.2d 369, 372 (2nd Cir. 1966) (supporting a jury finding that a self-propelled mail and baggage car qualified as a locomotive under the BIA because there was a sufficient evidentiary basis for the finding)[11]; Garcia v. Burlington Northern Railroad Co., 818 F.2d 713, 715 (10th Cir. 1987) (finding that a locomotive is any motor car "used to push or pull any other car along the railroad tracks"); Duchsherer v. Northern Pacific Railway Co., 4 Wash. App. 291, 294 (1971) (finding a self-propelled motorcar to be a locomotive under the BIA).

Under such a definition, in the instant case, car 402 qualified as a locomotive at the time of the

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[10] This definition is used by the Court due to the absence of any statutory or otherwise legal definition.

[11] Holfester is of particular relevance because the car at issue is car 402 in that each car had the dual both purposes of both propelling the train and transporting objects. In Holfester the objects were mail and baggage, while in this case the "objects" were primarily persons. 360 F.2d 369.

accident because it was a self-propelled passenger car situated on railroad tracks and ready to engage in a locomotive function of pulling two other train cars.[12] Appellant argues that a locomotive should be limited to only the operating compartment of a train car. Def.'s Memorandum in Support of its Motion for Post Trial Relief 7 (December 31, 2003). As discussed above, this narrow construction is not supported by either relevant case law or the plain definitional meaning of the term locomotive.

Furthermore, additional investigation into the meaning of the word "cab" proves illustrative for support of a broader reading of the term locomotive. A "cab" is defined as "the part of a locomotive that

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[12] While it is true that the multi-unit train was not actually in transit at the time of the accident, the train was "in use" as per the LIA and had completed "changing ends," with car 402 replacing car 420 as the lead car and locomotive of the train. Haworth v. Burlington Northern and Santa Fe R. Co., 2003 WL 22129467 (E.D.Wash.) (finding a train to be in use as long as it is "in its final predeparture stages, and being neither serviced nor repaired." The engineer had completed all tests on the operating components and the train was to momentarily make its return trip. Therefore, the train qualified as being in use under the LIA). Car 402 was ready to make the return "run" and the engineer had already completed his tests on the braking systems and other operating components, making car 402 the locomotive of the multi-unit train. 9/29/03 N.T. 50-53. Additionally, it is perfectly logical to find that a locomotive exists on a non-moving train. While a passenger-train is "running," it interrupts service at multiple stations to allow passengers to enter and exit the train. These minor stoppages are indistinguishable from the one existing when Appellee's accident occurred because in each, the trains would be in pre-departure stage with the cabs readied for operation. Therefore, at the time of the accident, car 402 was "in use" as the locomotive of the train.

houses the engineer and operating controls."[13] Merriam-Webster Online Dictionary, *Cab*, http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=cab (accessed June 8, 2004) (emphasis added). This definition contemplates a locomotive consisting of both operating and non-operating components and supports a finding that a car containing an engineering cab and a passenger cabin is a "locomotive." In addition to this definition, the Court is also persuaded to give the term "locomotive" a broad reading because of the remedial nature of the LIA, compelling a liberal construction of the act. Urie v. Thompson, 337 U.S. 163, 181-82 (1949). Absent any conflicting instruction from Congress, it was proper for this Court to deem car 402 a "locomotive", the defective door closer a part thereof, and allow Appellee to pursue recovery under the LIA.[14]

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[13] In the current case, the engineer of the train affirmed that car 402 consisted of two compartments, a cab containing the propulsion controls, and a "coach" section, (9/29/03 N.T. 52).

[14] A "part" is defined as "one of the often indefinite or unequal subdivisions into which something is or is regarded as divided and which together constitute the whole." http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=part (accessed June 8, 2004). Finding a lack of any alternate Congressional definition for "part" in connection with the LIA, the Court is persuaded to adopt this common definition. Accordingly, the door closing mechanism clearly qualifies as a "part" of the locomotive because the mechanism, together with other objects contained within car 402, constitute a multi-unit car in its entirety.

**B. UNDER THE PLAIN MEANING OF THE WORD APPURTENANCE, A PARLOR DOOR ON A CAR ADJACENT TO AN OPERATING CAB IS APPURTENANT TO A LOCOMOTIVE.**

This Court is satisfied that car 402 was a locomotive, and the door closing mechanism a part of that locomotive, thereby permitting recovery under the LIA, However, the Appellant contends that only the operating cab of car 402 was a locomotive (instead of the entire car) and that the door closer was not an "appurtenance" of said locomotive, thereby precluding recovery under the LIA. Assuming contrary to the Court's findings, that Appellant's definition of locomotive is correct, the door closer qualifies as an appurtenance of the operating cab and therefore recovery is still authorized under the LIA.

Finding no contrary definition for "appurtenance" in the Congressional Record, it is logical for this Court to assume that Congress intended the word to be given its common and normal meaning. Dictionaries define an appurtenance to be an adjunct or annexed part of another object. Black's Law Dictionary 41 Bryan A. Garner ed., 2nd Pocket ed., West 2001; Merriam-Webster Online Dictionary, *Appurtenance*, http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=appurtenance (accessed June 8, 2004). This is supported by case law defining an appurtenance as "a thing . . . belonging to, accessory, or incident to some other thing." Brown, 108 N.Y. Misc. 395 (Appurtenance language was used in original BIA to extend coverage from boiler to entire locomotive. Though a 1915 amendment to the BIA similarly

extended the BIA to the entire locomotive, the cause of action in Brown accrued before the amendment took effect. Thus, Brown used the word appurtenance to increase the previously accepted scope of the BIA). Assuming, as the Appellant argues, that the locomotive consisted of only the forward most operating compartment of the multi-unit train, these definitions still allow for a parlor door of a lead passenger car to be considered an appurtenance to the locomotive because it is an appendage and accessory of the operating compartment

The rear door to the car qualified as "belonging to" the operating compartment because both the operating compartment and the front passenger section (to which the parlor door in question was attached) were part of a unit known collectively as car 402. The operating compartment was not joined to the passenger section by use of couplers or any other connecting device. Rather, the two were permanently joined as a singular self-propelled unit and therefore, a door from the passenger compartment was an appendage "belonging to" the operating compartment.[15] Finally, the remedial nature of the LIA supports a liberal reading of the word appurtenance, and lends support to this Court's finding that a door closing mechanism qualifies as an

[15] For further support that the door functioned as an accessory to the operating compartment, it was the common practice of the train crew to use passenger compartment parlor doors as entrances to the "coach" portions of the front train car for sitting while in the process of changing ends. (9/29/03 N.T. 52). In fact, the engineer testified at trial that he was seated in the coach section of car 402 at the time of the Appelle's accident. Id.

"appurtenance" under the act.[16]

### C. CASE LAW OFFERED BY APPELLANT LIMITING THE DEFINITION OF AN "APPURTENANCE" IS DISTINGUISHABLE AND NOT PERSUASIVE TO THIS COURT.

Cases offered by the Appellant establishing a definition of appurtenant locomotive components as those that are integral or essential parts of a completed locomotive are not compelling because their holdings are limited to situations factually distinct from the current action before this Court. The initial case announcing the "integral or essential" language did so in the context of an experimental device placed on a locomotive. Southern Ry. Co. v. Lunsford, 297 U.S. 398, 402 (1936). While the Appellant contends that Lunsford stands for the general proposition that to qualify as an appurtenance to a locomotive an object must be essential or integral to the completed locomotive, an examination of Lunsford's holding in context is illustrative:

> it cannot be said that Congress intended that every gadget placed upon a locomotive . . . for

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[16] This Court's finding is substantiated by case law that deems "appurtenances" to include a myriad of other objects attached to or associated with a locomotive. These objects include: warning torpedoes (Chicago v. Speth, 404 F.2d 291); a "lifting eye" (Southern Railway v. Bryan, 375 F.2d 155); a fuse box (Holfester v. Long Island Railroad, 360 F.2d 369); a locomotive platform (Calabritto v. New York Railroad, 287 F.2d 394); an engineer's seat (Heiselmoyer v. PA Railroad, 243 F.2d 773); a foot board (Louisville & Nashville Railroad v. Botts, 173 F.2d 164); an automatic bell ringer (Hines v. Smith, 275 F. 766); a radio (Green v. River Terminal Railway, 585 F.Supp. 1019); and a push-pole (Zollinger v. Pittsburgh & Lake Erie Railroad, 337 F.Supp. 913).

> *experimental* purposes, should become part thereof within the [BIA] . . . Whatever in fact is an integral or essential part of a completed locomotive . . . [is] within the [BIA]. But mere *experimental* devices . . . are not.

Id (emphasis added).

This more complete reading of the appurtenance definition from Lunsford is supported by subsequent case law holding that the "precise holding in Lunsford . . . was that an *experimental* device that had been installed on a locomotive by the railroad was not a 'part and appurtenance.'" Marshall v. Burlington Northern Inc., 720 F.2d 1149, 1152 (9th Cir. 1983) (emphasis added); Zollinger v. Pittsburgh and Lake Erie R.R. Co., 337 F. Supp. 913, 914 (W.D.Pa. 1972) (distinguishing the use of a push-pole, in operation since 1906, from Lunsford - "This last factor distinguishes [Lunsford] in which the device in question was new and experimental, designated as a 'gadget' by the court"). Appellant argues that the holding from Lunsford was extended in Herold v. Burlington Northern Inc. to cases outside of the experimental context. 761 F.2d 1241 (8th Cir, 1985). While Herold does reference Lunsford, it does so only for a summary of a railroad carrier's duty under the BIA and to identify Lunsford as limited to cases involving experimental devices. Id at 1245-1246 ("[Lunsford] held it was not an appurtenance; not because the device was not required by the [Interstate Commerce Commission] but rather because the device was experimental"). Instead of relying on the "integral or essential" language from Lunsford, the court found that the device at issue (an amber beacon attached to the locomotive) was an appurtenance based on an extensive listing of other items on locomotives that

were deemed to be appurtenances by various courts. Id at 1246-1247 (citing extensive list of objects that other jurisdictions found contained within the LIA).

The only extension of the "integral or essential" requirement for appurtenances outside of the experimental context involves the failure to install components on trains. Mosco v. Baltimore & Ohio R.R., 817 F.2d 1088, 1091 (4th Cir. 1987) (noting that "we derive the rule that a carrier cannot be held liable under the Boiler Inspection Act for *failure* to install equipment on a locomotive unless the omitted equipment. . . constitutes an integral or essential part of a completed locomotive") (emphasis added); McGinn v. Burlington Northern Railroad Co., 102 F.3d 295, 299 (7th Cir. 1996) (finding railroad not liable under the BIA for failure to install luggage racks in engine cab); King v. Southern Pacific Transportation Co., 855 F.2d 1485, 1488-89 (10th Cir. 1988) (holding that a lack of armrests on seats was not covered under the BIA because the armrests were not integral or essential parts of the completed locomotive); Gardner v. CSX Transportation, Inc., 201 W.Va. 490, 497 (1997) (finding that missing seat belts, armrests and hinges of cab seats were not integral or essential parts of the locomotive). Appellant offers these cases to support its assertion that the door closer must be integral or essential to the completed locomotive in order for it to be an appurtenance thereto. This case law is not persuasive, however, because the accident in the instant case occurred due to a defect in an already existing mechanism, rather than an injury caused by the absence of such a mechanism. Therefore, the "integral or essential" definition required for recovery in the aforementioned failure to install context is not applicable to the instant case.

The Appellant offers only one case besides the distinguishable "integral or essential" decisions in support of its assertion that the door closing mechanism is not an "appurtenance". Def.'s Memorandum in Support of its Motion for Post Trial Relief at 10; Varney v. Norfolk and Western Railway Co., 899 F. Supp. 280, 282 (S.D. W. Va. 1995). In Varney the court precluded recovery under the BIA when a radio had been removed from a locomotive and was in transit to another locomotive, finding that the broken strap on the radio did not create an unnecessary risk. 899 F. Supp. at 281-282. Appellant claim that Varney mandates that the door closing mechanism not be labeled an appurtenance of the operating component. Appellant misconstrues the court's finding in Varney: "In addition, the Court finds, as a matter of law, that *when the radio was detached from its casing and in transit* to another locomotive, it was no longer a part or appurtenance of the locomotive for purposes of liability under the Boiler Inspection Act." Id at 282 (emphasis added).

The present action is clearly distinguishable from Varney because the door closing mechanism was never detached from its original location nor was it in transit to any other locomotive. The "appurtenance" holding in Varney is limited to a very fact specific situation not present before this Court. We are not persuaded to apply the holding from Varney, and instead adopt the plain meaning of the term "appurtenance," believing it to be more congruent with the intent of Congress.[17]

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[17] Furthermore, the specific language offered in the Varney holding seems to indicate that had the radio *not* been removed and in transit, that it could have constituted an "appurtenance" of the locomotive.

Accordingly, even accepting Appellant's definition limiting the locomotive to only the front operating compartment, the door closing mechanism is an appurtenance to the operating compartment and therefore falls within the purview of the LIA.

## II. APPLYING THE LOCOMOTIVE INSPECTION ACT TO THE CURRENT SITUATION IS NOT CONTRARY TO THE POLICY UNDERLYING THE DOCTRINE OF STRICK LIABILITY.

Appellant claims that the finding that a door closing mechanism is covered under the LIA is contrary to the policy underlying the doctrine of strict liability, however, appellant fails to offer any legal precedent to direct this Court that permitting recovery under the LIA would be inappropriate within the confines of strict liability. Def.'s Memorandum in Support of its Motion for Post Trial Relief at 11-13. First, Appellant asserts that "The rationale for strict liability is that the *boiler* constituted a part of a locomotive that was inherently dangerous and a malfunction in the boiler was something outside of the control of the employee." Id at 12 (emphasis added). This statement has no basis as the LIA (and even the amended form of the BIA) is not limited to only the boiler of a locomotive, but rather covers the entire locomotive and all parts and appurtenances thereto. Furthermore, Congress made clear that it intended the principles of strict liability to extend to situations beyond boiler explosions. Cong. Rec. H5355 (daily ed. March 3, 1915) (stating that the 1915 amendment to the BIA "contemplates the inspection of the entire

locomotive").[18]

Appellant next contends that the LIA should not be applied because a defective door closer is not an "unnecessary danger" or "ultrahazardous activity" and that application of the LIA would therefore be contrary to the doctrine of strict liability. While it is true that a defective door closing mechanism might not constitute an "ultrahazardous activity" in the sane way that explosions and other inherently dangerous occurrences do, the door certainly poses an unnecessary danger to the railroad workers and passengers when it is in a defective and broken condition. The magnitude and scope of the danger involved in the instant case was within the discretion of the jury to find as a question of fact. Louisville & Nashville Railroad v. Botts, 173 F.2d 164, 166. With a verdict for the Appellee at trial, it is apparent that the jury found that the broken door closing mechanism constituted an unnecessary danger, warranting

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[18] Associated text of the legislative history supports this conclusion. In it, Senator Robinson notes that the amendment would have the "boiler inspection . . . made by persons who have had five years practical experience in boiler making, and that the inspection *of the remainder* of the locomotive shall be made by a person who has had practical experience in the construction and operation of locomotives." Cong. Rec. H5355 (daily ed. March 3, 1915) (emphasis added). This discussion, which contemplates the creation of two separate inspectors, clearly shows that the amendment was meant to extend coverage of the original BIA beyond the boiler and to the entire locomotive. Also, of note, Congress did not limit the BIA (and the LIA) to situations outside the control of the employee. Appellant points to no statutory language or text from the Congressional Record to support its assertion and this Court fails to find any such support in either source.

coverage within parameters of the LIA.

Furthermore, the argument advanced by the Appellant that if the defective door were "meant to be covered by the doctrine of strict liability, like a boiler explosion, there would not be a situation where an employee could subsequently operate the equipment involved in the incident without a problem" is unsupported. Def.'s Memorandum in Support of its Motion for Post Trial Relief at 12. The Appellant does not provide any technical basis supporting the assumption that all boiler explosions would render the boiler inoperable.[19] In the absence of such technical data, logic would permit the view that it is entirely possible to use a boiler following an explosion, provided the explosion is not large enough to render the entire boiler inoperable.

Finally, Appellant claims that because the Appellee "could have prevented the accident by his own conduct" the underlying policy of strict liability found in LIA would be violated if it were applied to the current situation. Besides a failure to again legally substantiate this assertion, Appellant's argument clearly relies on a consideration of contributory negligence, which is not permitted as a defense to a finding of strict liability under the LIA. Haworth, 2003 WL 22129467 (finding that because Defendant liable under the LIA that they were "precluded from

[19] Also, the Appellant fails to offer any case law supporting the conclusion that use of an object following an accident renders the object outside the purview of the LIA. To the contrary, nothing in the established case law indicates that courts have precluded recovery under the LIA in situations where the equipment involved in the incident remained operable subsequent to the accident causing the injury.

asserting contributory negligence as a defense"). In sum, the LIA itself precludes the consideration of the exact situation (contributory conduct of the Appellee) that the Appellant argues should limit its application.

**CONCLUSION**

Based on the aforementioned, the Trial Court properly allowed the fact-finder to determine liability issues under the Locomotive Inspection Act, as there were no legal or policy reasons to limit application of the Locomotive Inspection Act under the current factual circumstances. Wherefore, the Trial Court's ruling was proper and should be affirmed.

BY THE COURT

/s/ Annette M. Rizzo J.

ANNETTE M. RIZZO

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AUG 16 2004

FIRST JUDICIAL DISTRICT OF PA
USER I.D.: /s/ DML

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| | | | | |
|---|---|---|---|---|
| Event:_____, at__/__/__ __ : in _____<br>Scheduled:__/__/__ JURY | | JE – MAJOR JURY-EXPEDITED | | |
| Judge's Name:<br>Annette M. Rizzo | | | Signature:<br>X /s/ Annette M. Rizzo | |
| Caption:<br>BOLDEN VS SEPTA | | | | Case Type:<br>2F<br>PERSONAL<br>INJURY – FELA |
| Term and Number:<br>199804-01970 | If Consolidated:<br>Term and Number(s) | | | |
| TRIAL<br>DATE:<br>9/26/03 | ACTUAL:<br>(x) JURY<br>( ) NON-JURY | TOTAL AMOUNT<br>$460,000.00 | NUMBER<br>OF DAYS<br>10 | DATE SHEET<br>PREPARED<br>10/11/03 |
| Disposition Date:<br>10/10/03 | | | | |

DOCKETED
OCT 20 2003
F.CLARK
CIVIL ADMINISTRATION

FULL DESCRIPTION OF DISPOSITION (To Be Entered VERBATIM On The Docket):
Jury verdict in favor of Plaintiff, Leonard Bolden and against defendant Southeastern Transportation Authority in the sum of $460,000.00, under the "Locomotive Inspection Act".

Default Judgment/Court Ordered
Dispositive Motion Granted
Directed Verdict
Discontinuance Ordered
Discontinue/Transfer Binding ARB

Finding For Defendant
Finding For Plaintiff
Damages Assessed

Judgment Entered By Agreement
Judgment Entered

(x) Jury Verdict For Plaintiff
( ) Jury Verdict For Defendant
( ) Mistrial
( ) Hung Jury

( ) Non-Pros Entered
( ) Non-Suit Entered

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OCT 15 2003
FIRST JUDICIAL DISTRICT OF PA
USER I.D.: /s/ DML

( ) Settled Prior To Assignment For Trial
(Team Leaders, only)
( ) Settled After Assignment For Trial
( ) Transferred To Other Jurisdiction

( ) Other (Explain) _____